



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155, 14-D12
Seattle, WA 98101-3144

REGIONAL
ADMINISTRATOR'S
DIVISION

May 15, 2023

Emily Grimes, Environmental Program Manager
General Services Administration
1301 A Street, Suite 610
Tacoma, Washington 98402

Dear Emily Grimes:

The U.S. Environmental Protection Agency has reviewed General Services Administration's April 2023 notice to prepare an Environmental Impact Statement for the Alcan Land Port of Entry (EPA Project Number 23-0017-GSA). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The Draft EIS will consider the effects of proposed modernization and expansion of the Alcan Land Port of Entry. Alcan LPOE is in a remote area of eastern Alaska on the Alaska Highway. It is the only year-round, full service, 24-hour port of entry serving personal vehicles and commercial truck traffic between Yukon Territory, Canada and Interior Alaska. The DEIS will consider two action alternatives: modernizing and expanding the existing LPOE; and relocating the LPOE to a new site approximately four miles to the northwest of the current location near the Alaska-Canada border. The proposal may include operating the Alcan LPOE jointly with the Canada Border Services Agency.

EPA supports GSA's project commitment to increase energy and water efficiency, adhere to sustainable design principles, and minimize climate risk liabilities. EPA has identified concerns about potential impacts from project activities and has included comments on water quality and aquatic resources, air quality, climate change, permafrost and vegetation, environmental justice, meaningful community engagement, traditional ecological knowledge, and cumulative impacts. Enclosed are more detailed recommendations.

Thank you for the opportunity to provide scoping comments for this DEIS development process. If you have questions about this review, please contact Susan Sturges of my staff at 206-553-2117 and sturges.susan@epa.gov or me, at (206) 553-1774 or at chu.rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**USEPA Detailed Scoping Comments for the
Alcan Land Port of Entry Project
Near Tok, Alaska
May 2023**

Water Quality and Aquatic Resources

Revised Definition of Waters of the United States

On January 18, 2023, EPA and the Department of Army published a final rule establishing the Revised Definition of “Waters of the United States” (2023 Rule).¹ The 2023 Rule became effective on March 20, 2023. However, on April 12, 2023, a district court judge in North Dakota issued an order preliminarily enjoining the 2023 Rule in 24 states, including Alaska.² In light of this preliminary injunction, as of the date of these comments, EPA and the Department of Army are interpreting “waters of the United States” (WOTUS) consistent with the pre-2015 regulatory definition in Alaska. Any CWA permit issued for the project will be evaluated for impacts to WOTUS based on the regulatory definition applicable at that time, which may be different from the regulatory definition that is currently applicable. For the latest information on interpretation of WOTUS in Alaska, EPA encourages GSA to contact the U.S. Army Corps of Engineers Alaska District (USACE) or the EPA. You may also visit EPA’s Rule Status webpage for information about the status of the rule and litigation.³

Clean Water Act § 402

In Alaska, EPA issues National Pollutant Discharge Elimination System (NPDES) permits for federally-owned facilities located in Denali National Park; facilities operating outside state waters; facilities that have been issued Clean Water Act § 301(h) waivers; and all permits on tribal lands. EPA has delegated authority to issue other NPDES permits to the Alaska Department of Environmental Conservation.⁴

EPA recommends the DEIS identify any discharges to WOTUS that are known, or are likely, to occur during construction and operation of the project and how these discharges would be managed and minimized. Identify the NPDES permits that will be obtained for the construction phase, new (or modifications to) existing permits for operations, and how any previous permit exceedances could be prevented by incorporating pollution prevention measures into the project.

CWA § 404

CWA § 404 requires permits from the USACE for the discharge of dredged or fill material into WOTUS. Wetlands, vegetated shallows, mud flats, and cobble substrates are all considered special aquatic sites under the CWA Section 404(b)(1) Guidelines (40 CFR 230).

EPA recommends that the DEIS:

- Clearly identify any discharges to WOTUS that are known, or likely, to occur that will be subject to CWA § 404. Identify and describe the impact of those discharges, control

¹ Department of the Army, Corps of Engineers, Department of Defense; and Environmental Protection Agency (January 18, 2023). Revised Definition of “Waters of the United States.” 88 FR 3004.

² See *West Virginia v. EPA*, 2023 WL 2914389 (D. N.D. 2023).

³ <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update> . Accessed 5/11/2023.

⁴ <https://dec.alaska.gov/water/wastewater/>. Accessed 5/5/2023.

measures to be employed to address those impacts, and best management practices to prevent discharge of water and pollutants.

- Include sufficient information that can serve as a basis to determine whether the project would satisfy the requirements for the CWA § 404 permit or identify appropriate measures to mitigate the project's impacts to all WOTUS.
- Structure the alternatives analysis so that it is consistent with meeting requirements of both the CWA and NEPA.
- Describe the regulatory criteria and processes utilized to screen potential alternatives and thoroughly evaluate alternatives that would pose less adverse impacts.
- Describe how compensatory mitigation will be quantified and provided to offset impacts, with specific project examples and options as available.

For context on the CWA § 404(b)(1) analysis, the Guidelines include four main requirements (40 CFR 230.10 (a) through (d)):

Least Environmentally Damaging Practical Alternative (LEDPA) Determination - Section 230.10(a)

A CWA § 404 permit can be issued for the LEDPA only. Practicable alternatives include those that are capable and feasible of being done after taking into consideration costs, technology, and logistics. Costs alone cannot make a project not practicable. USACE permit decisions require a comprehensive evaluation of the range of alternatives to ensure the permitted alternative is the LEDPA. Identification of the LEDPA is achieved by performing an alternatives analysis that estimates the direct, indirect, and cumulative impacts to jurisdictional WOTUS that would result from each of the potential project alternatives. Only when this analysis has been performed can the applicant or the permitting authority be assured that no discharge other than the practicable alternative with the least impact on the aquatic ecosystem will be authorized.

Water Quality - Section 230.10(b)

Prohibits permitting projects that would cause or contribute to violations of water quality standards, violates any applicable toxic effluent standard, jeopardizes continued existence of endangered or threatened species and impacts to critical habitat under the Endangered Species Act, or violates any requirements to protect any marine sanctuary designated under Marine Protection, Research, and Sanctuaries Act.

Significant Degradation - Section 230.10(c)

Prohibits permitting a project that causes or contributes to significant degradation of aquatic resources. Effects contributing to significant degradation include: (1) adverse effects on plankton, fish, shellfish, wildlife, and special aquatic sites (40 CFR 230.10(c)(1)), (2) adverse effects on life stages of aquatic life (40 CFR 230.10(c)(2)), (3) aquatic ecosystem diversity, productivity, and stability including loss of fish and wildlife habitat (40 CFR 230.10(c)(3)), and (4) impairment or destruction of endangered species habitat (40 CFR 230.30(2)).

Mitigation - Section 230.10(d)

Requires compensatory mitigation for unavoidable impacts to aquatic resource functions. The 2008 Joint EPA-Corps Federal Mitigation Rule (40 CFR 230.91-98) establishes a preference for compensatory mitigation based on a watershed approach, which can ensure that potential direct and indirect impacts of the project are offset. In addition to identifying all measures to

avoid and minimize adverse impacts to the aquatic environment (showing compliance with 40 CFR Part 230.10(a)), for unavoidable impacts, identify compensatory mitigation.

CWA § 401

The CWA provides states and authorized tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into WOTUS. This section of the CWA is an important tool for states and authorized tribes, in collaboration with federal agencies, to help protect the water quality of federally regulated waters within their borders. In developing the DEIS, EPA recommends early coordination with the State of Alaska regarding CWA § 401 for the purposes of streamlining regulatory processes.

CWA § 303(d)

The CWA requires states to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans called Total Maximum Daily Loads (TMDLs) to improve water quality. EPA recommends the DEIS include information on any CWA § 303(d) impaired waters in the project area and any efforts related to TMDLs. Discuss what effect, if any, project discharges may have on impaired waterbodies. EPA recommends the DEIS describe existing restoration and enhancement efforts for those waters, how the proposed project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Air Quality

EPA recommends the DEIS discuss air quality impacts from project construction, maintenance, and operations with respect to criteria air pollutants and air toxics, including diesel particulate matter emissions and fugitive dust emissions. Discuss the direct, indirect, and cumulative impacts of project related air emissions. Disclose current representative background air pollutant concentrations in the areas of the project and compare these concentrations to the state and federal ambient air quality standards. Disclose any air quality requirements related to the project.

For air pollutant emissions expected during construction, discuss the potential exposure of these pollutants to nearby sensitive populations. EPA recommends including a discussion of measures to minimize air quality impacts on the local environment and decrease exposure of construction-related emissions to sensitive populations. For example, locate construction equipment and staging zones away from sensitive receptors and fresh air intakes to buildings.

Climate Change

On January 9, 2023, Council on Environmental Quality (CEQ) published interim guidance to assist federal agencies in assessing and disclosing climate change impacts during environmental reviews.⁵ CEQ developed this guidance in response to EO 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. This interim guidance is effective immediately. CEQ indicated that agencies use this interim guidance to inform the NEPA review for all new proposed actions and may use it for evaluations in process, as agencies deem appropriate, such as informing the consideration of alternatives or helping address comments raised through the public comment process.

⁵ <https://www.federalregister.gov/documents/2023/01/09/2023-00158/national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions-and-climate>. Accessed 5/5/2023.

EPA recommends the DEIS apply the interim guidance as appropriate, to ensure robust consideration of potential climate impacts, mitigation, and adaptation issues.

Permafrost and Vegetation

The proposed project may result in the disturbance of permafrost resulting from removing the overlying vegetation and organic material, placing gravel fill material on the surface for access roads and facility pads, or excavating and trenching the area to install underground facilities. EPA recommends that the DEIS include discussion of the following:

- Baseline information on vegetation and permafrost, including a location/mapping analysis.
- Surface disturbance activities to permafrost and vegetation and related impacts.
- Mitigation measures to minimize the project impacts to permafrost and vegetation.
- Potential for invasive plant introduction and control mechanisms to minimize economic, ecological, and human health impacts in the area.
- Restoration and reclamation of disturbed areas post project construction.

Environmental Justice

On April 21, 2023, President Biden signed Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*⁶ which highlights the need for a whole-of-government effort to confront longstanding environmental injustices and inequities. Consistent with Executive Order 12898 and each agency's statutory authority, EO 14096 calls on each agency to make achieving EJ part of its mission, including by carrying out environmental reviews under NEPA in a manner that:

- analyzes direct, indirect, and cumulative effects of federal actions on communities with EJ concerns;
- considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and
- provides opportunities for early and meaningful involvement in the environmental review process by communities with EJ concerns potentially affected by the proposed action.

EJScreen is EPA's nationally consistent environmental justice screening and mapping tool.⁷ EJScreen offers a variety of powerful data and mapping capabilities that enable users to understand details about the population of an area and the environmental conditions in which they live. The tool provides information on environmental and socioeconomic indicators as well as pollution sources, health disparities, critical service gaps, and climate change data. The data is displayed in color-coded maps and standard data reports which feature how a selected location compares to the rest of the nation and state.

Assessing EJScreen information is a useful first step in understanding or highlighting locations that may be candidates for further review or outreach. EPA considers a project to be in an area of potential environmental justice (EJ) concern when an EJScreen analysis for the impacted area shows one or more at or above the 80th percentile in the nation and/or state. An area may also warrant additional review if other information suggests the potential for EJ concerns. An EJScreen analysis which does not reveal

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>. Accessed 5/11/23.

⁷ EPA's Environmental Justice Screening and Mapping Tool (Version 2.0): <https://ejscreen.epa.gov/mapper/>. Accessed 5/5/2023.

the potential for EJ concerns should not be interpreted to mean that there are definitively no EJ concerns present.

It is important to consider all impacted areas by the proposed action(s). Areas of impact can be very focused and contained within a single block group, or broader, spanning across several block groups and communities.⁸ Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.⁹ Further review or outreach may be necessary for the proposed action. To address these potential concerns, EPA recommends the DEIS:

- Apply methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report to this project.¹⁰ This report compiles methodologies from current agency practices for integrating EJ considerations in NEPA processes.
- Characterize the project site with specific information or data related to EJ concerns.¹¹
- Describe potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Screen for and describe all individual block groups within or intersecting a 1-mile radius of the project.
- Describe individual block groups within the project area in addition to an area-wide assessment.
- As EJScreen does not have data on all factors that may be relevant for identify EJ concerns, supplement data with county level reports and local knowledge.

Projects in rural locations can often occur near communities with EJ concerns experiencing critical service gaps (e.g., food deserts, medically underserved areas) or near locations where Tribal members and indigenous peoples reside. EPA recommends consulting data in EJScreen on these topics (and other reasonably available data) to help inform EJ scoping efforts. Due to low population densities in rural areas, the presence of communities with EJ concerns can be underrepresented. Underrepresentation can also result from larger geographic units of analysis (e.g., census tracts) in rural areas.

Meaningful Public Engagement

EPA recommends the DEIS detail the opportunities for effective and meaningful public engagement for communities with EJ concerns, as described in the Promising Practices for EJ Methodologies in NEPA reviews and EO 14096. We recommend the following measures to further advance meaningful involvement:

- Carefully review and consider community feedback provided during the NEPA process. Ensure that the NEPA engagement approach is sensitive and responsive to the wellbeing of affected communities.

⁸Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions” (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

⁹ EPA’s Technical Documentation for EJScreen: <https://www.epa.gov/ejscreen/technical-information-about-ejscreen> . Accessed 5/5/2023.

¹⁰ Promising Practices for EJ Methodologies in NEPA Reviews: https://www.epa.gov/sites/default/files/2016-08/documents/NEPA_promising_practices_document_2016.pdf . Accessed 5/5/2023.

¹¹ For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>. Accessed 5/5/2023.

- Ensure that community feedback is reflected in the decision-making process. Design robust community engagement practices to maximize participation opportunities for communities that would be affected by the project, such as community-based workshops to facilitate discussion and issue resolution. Community-based workshops may also provide an opportunity to identify key issues and milestones for meaningful engagement in the NEPA process for the communities.
- Provide early and frequent outreach and engagement opportunities to collect and incorporate community feedback throughout the NEPA process and to maintain maximum transparency.
- Ensure that translation/interpretation services are provided to accommodate linguistically isolated populations.
- Address technology barriers that may prohibit participation from communities affected by the project.
- Ensure that meetings are scheduled at a time and location that is accessible for community participants, including scheduling meetings after work hours and on weekends as appropriate.
- Provide ample notice of meetings and commenting opportunities so that community members have sufficient time to prepare and participate.
- Promote engagement opportunities within appropriate outlets used by affected communities, such as newspapers, radio, and social media.
- Ensure that all project-related information is conveyed using plain language so that community members of varied reading proficiencies can readily understand the project-related information.

Tribal Consultation

EPA encourages GSA to consult with the Tribes and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the DEIS describe the issues raised during the consultations and how those issues were addressed.

Traditional Ecological Knowledge

On November 30, 2022, CEQ published Guidance for Federal Department and Agencies on Indigenous Knowledge.¹² EPA recommends the DEIS include the identification, inclusion, and integration of Traditional Ecological Knowledge (TEK) into the NEPA analysis. This can include the collection of local and traditional knowledge concerning the affected environment, anticipated impacts from the project, as well as traditional hunting and land use patterns in the area. TEK could also be used to support the understanding of how climate change has impacted local environmental resources and subsistence resources. In addition to reviewing any pertinent traditional environmental knowledge currently available, additional studies and outreach may be conducted as necessary to clearly identify concerns and potential impacts, including cumulative impacts, from the proposed project and project alternatives.

Cumulative Effects

EPA recommends the DEIS include an assessment of the cumulative impacts that would be associated with the proposed action, specifically, five key areas:

- Resources, if any, that are being cumulatively impacted.
- Appropriate geographic area and the time over which the effects have occurred and will occur.

¹² <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IG-Guidance.pdf>. Accessed 5/5/2023.

- All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.
- A benchmark or baseline of existing environmental conditions.
- Scientifically defensible threshold levels.

Endangered Species

The proposed project may impact endangered, threatened, or candidate species listed under the Endangered Species Act and their habitats. State sensitive species may also be impacted. EPA recommends that the DEIS:

- Identify the endangered, threatened, and candidate species under ESA, and other sensitive species within the project area and vicinity.
- Provide information on the critical habitat for the species.
- Evaluate impacts the project could have on the species and their critical habitats.
- Describe how the proposed project will meet all requirements under ESA, including consultation with the U.S. Fish and Wildlife Service.